



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1994

Mr. G. Mike Davis
State Fire Marshal
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286

OR94-695

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29385.

The Texas Commission on Fire Protection (the "commission") has received a request for information relating to a certain fire. Specifically, the requestor seeks "a copy of the fire report on Jean Masters of America, 1000 Industrial Blvd., Dilly, Texas." You seek to withhold some of the requested information from required public disclosure under section 552.108 of the Government Code. As you do not comment on the remainder of the requested information, we assume that it has been or will be released. *See* Open Records Decision No. 363 (1983).

Section 552.108 excepts from required public disclosure:

(a) [A] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

(b) [A]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle*

Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

You advise us that the requested information relates to a pending investigation conducted by the Office of the State Fire Marshal. We have examined the documents submitted to us for review and conclude that they may be withheld under section 552.108 of the Government Code except to the extent that they contain first page offense report material. *See* Open Records Decision No. 134 (1976) (concluding that section 552.108 excepts portions of State Fire Marshal's arson investigation).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref.: ID# 29385

Enclosures: Submitted documents

cc: Ms. Mitzi Boyles
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(w/o enclosures)